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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/909,130	08/11/1997	JAMES E. COX	33019/138/10	1242

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CROMPTON, SEAGER & TUFTE, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420

EXAMINER

DESANTO, MATTHEW F

ART UNIT PAPER NUMBER

3763

DATE MAILED: 11/18/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

08/909,130

Applicant(s)

COX ET AL.

Examiner

Matthew F DeSanto

Art Unit

3763

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 4,5 and 10-12.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: Definition of Proximally and Proximate

Continuation of 5. does NOT place the application in condition for allowance because: The prior art still teaches the claimed invention. The examiner does not understand the definition of "proximate" and how this definition is different then "proximal." According to The American Heritage Dictionary of the English language, "proximally" and "proximate" have the same definition, therefore making the argument moot. The examiner looked on Page 5, lines 3-4 of the Specification and did not find any definition of "proximate." The examiner next notes the term "collapsible" is a functional language statement. Every lumen is collapsible when enough push is exerted on the catheter, therefore the examiner suggests to add specific structure that forms the "collapsible" lumen or makes the lumen "collapsible".

Matthew DeK...

11/12/03

Brian L. Casler
BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

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prox-i-mate

(click to hear the word) (prŏk'sə-mīt)

adj.

1. Very near or next, as in space, time, or order. See Synonyms at [close](#).
2. Approximate.

[Latin proximātus, past participle of proximāre, *to come near*, from proximus, *nearest*; see per¹ in Indo-European roots.]

prox'i-mate-ly adv.

prox'i-mate-ness n.

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prox-i-mal

(click to hear the word) (prŏk'sə-məl)

adj.

1. Nearest; proximate.
2. *Anatomy* Nearer to a point of reference such as an origin, a point of attachment, or the midline of the body: *the proximal end of a bone.*

[From Latin *proximus*, *nearest*; see *proximate*.]

prox'i-mal·ly adv.

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